

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ESTEBAN LOPEZ,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 2:20-cv-00360 AC

ORDER

On April 30, 2021, the Administrative Record was filed in this case. ECF No. 14.

Pursuant to the scheduling order issued May 5, 2021 (ECF No. 16), plaintiff's opening brief was due June 21, 2021. On June 23, 2021, the court granted a stipulation to extend plaintiff's time to file an opening brief by 30 days, to July 21, 2021. ECF No. 18. Plaintiff's counsel noted in the stipulation that she was facing serious medical issues. ECF No. 17. Plaintiff failed to file a brief by the stipulated deadline, and on July 28, 2021 the court issued an order to show cause within 14 days why the case should not be dismissed for failure to prosecute. ECF No. 19.

On August 10, 2021, plaintiff responded to the order to show cause, citing counsel's illness as cause for the failure to file an opening brief. ECF No. 20. Counsel asked for a further extension to August 20, 2021 due to her medical issues. Id. On August 12, 2021, this court granted plaintiff an ex parte extension of time to August 20, 2021. ECF No. 21. That deadline

1 passed, and plaintiff did not file the anticipated. On September 21, 2021 the court issued an  
2 order to show cause by October 20, 2021, why this case should not be dismissed for failure to  
3 prosecute, noting that filing an opening brief before the deadline would discharge the order. ECF  
4 No. 22. Plaintiff still has not filed an opening brief.

5 The court is aware of and is sympathetic to plaintiff's counsel's medical condition and has  
6 granted one ex parte request for an extension of time on this basis already. ECF Nos. 20, 21.  
7 Nonetheless, counsel has an obligation to move the case forward. At this juncture, the court is  
8 concerned that due to counsel's medical condition, she is unable to fulfill her ethical duties to her  
9 client. The court recognizes that dismissal of this case for failure to prosecute would have serious  
10 consequences to plaintiff's ability to pursue his claims. The court hopes to avoid that result.

11 Considering the circumstances presented in this case, the court ORDERS plaintiff's  
12 counsel to file an opening brief by November 30, 2021. If plaintiff's counsel is unable to file an  
13 opening brief by that date, she is ORDERED to instead find substitute counsel by that deadline  
14 and notify the court of such substitution or reach an agreement with defendant regarding the  
15 management of this case. Failure to comply with this order will result in dismissal of this case  
16 without prejudice for failure to prosecute.

17 DATED: October 22, 2021

  
18 ALLISON CLAIRE  
19 UNITED STATES MAGISTRATE JUDGE

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